

JS 44 (Rev. 12/07) (cand rev 1-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

EBAY INC., a Delaware corporation

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

John W. Crittenden, Esq.
Cooley Godward Kronish LLP
101 California Street, 5th Floor
(415) 693-2000

DEFENDANTS

TELEBAY LLC, a Delaware limited liability company

County of Residence of First Listed Defendant Parker County, Texas
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State. | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury — Med. Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury — Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	PERSONAL PROPERTY	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs.	<input checked="" type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA(1395ff)	<input type="checkbox"/> 490 Cable/Sat. TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	PRISONER PETITIONS	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 441 Voting	Habeas Corpus:	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 445 Amer. w/Disabilities—Employment	<input type="checkbox"/> 550 Civil Rights	IMMIGRATION		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 446 Amer. w/Disabilities—Other	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights		<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property			<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. 1114, Fed. Trademark Infringe.; 15 U.S.C. 1125 Fed. Trademark Dilution and False Designation of Origin

Brief description of cause:

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ TBD

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)

(PLACE AND "X" IN ONE BOX ONLY)

☐ SAN FRANCISCO/OAKLAND☐ SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD

March 14, 2008

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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NORTHERN DISTRICT OF CALIFORNIA

CV 08

1459

EBAY INC., a Delaware corporation,

Plaintiff,

v.

TELEBAY LLC, a Delaware limited liability
company,

Defendant.

Case No.

PLAINTIFF EBAY INC.'S COMPLAINT
FOR:

(1) FEDERAL TRADEMARK
INFRINGEMENT 15 U.S.C. § 1114;
(2) FEDERAL TRADEMARK DILUTION 15
U.S.C. § 1125;
(3) FALSE DESIGNATION OF ORIGIN 15
U.S.C. § 1125;
(4) COMMON LAW TRADEMARK
INFRINGEMENT;
(5) COMMON LAW UNFAIR
COMPETITION;
(6) TRADEMARK INFRINGEMENT UNDER
CAL. BUS & PROF CODE § 14245;
(7) TRADEMARK DILUTION UNDER CAL.
BUS. & PROF. CODE § 14247; AND
(8) UNFAIR COMPETITION UNDER CAL.
BUS. & PROF. CODE §§ 17200, *ET SEQ.*

PARTIES

1. Plaintiff eBay Inc. ("eBay") is a Delaware corporation having its principal place of
business at 2145 Hamilton Avenue, San Jose, California 95125.

1 2. On information and belief, Defendant Telebay LLC ("Defendant") is a limited
2 liability company incorporated in the State of Delaware having a place of business at 411 South
3 Bowie Drive, Weatherford, Texas, 76086.

4 **JURISDICTION AND VENUE**

5 3. This Court has jurisdiction of this action under 15 U.S.C. §§ 1119 and 1121 and 28
6 U.S.C. §§ 1331, 1338, and 1367. This action is filed under the United States Trademark Act of
7 July 5, 1946, as amended, 15 U.S.C. § 1501 *et seq.* (the "Lanham Act").

8 4. This Court has personal jurisdiction over Defendant in that Defendant's willful
9 actions herein alleged took place in and/or caused tortious injury to eBay in this jurisdiction.

10 5. Venue is proper in this district pursuant to 28 U.S.C. § 1391, as this is a judicial
11 district in which a substantial part of the events giving rise to the claims occurred.

12 **COMMON ALLEGATIONS**

13 **EBAY'S BUSINESS**

14 6. eBay is the largest online marketplace in the world. As of June 30, 2007, eBay
15 had over 241 million registered users worldwide. As of December 21, 2007, eBay had over 83
16 million active users. At any given time, there are approximately 103.6 million listings of items
17 for sale or auction on eBay's online marketplace worldwide, and approximately 6.1 million
18 listings are added per day.

19 7. eBay users trade in more than 50,000 categories of goods and services, such as
20 electronics, gifts, collectibles, music, and automobile products, as well as specific designated
21 categories for "Telephones & Pagers" and "Cell Phones & PDA's," the latter of which has a long
22 list of sub-categories including "Phones w/ Service Contracts," "Prepaid phones" and "Calling
23 Cards." For example, as of March 3, 2008, there were over 410,000 listings of items for sale or
24 bid on the ebay.com Web site in the "Cell Phones & PDA's" category. eBay's 2007 Gross
25 Merchandise Bought for telephones, mobile phones and related accessories was in excess of \$500
26 million.

EBAY'S MARKS

8. Since its online marketplace was launched in September 1995, eBay has continuously used the mark EBAY in interstate commerce in the United States in connection with its goods and services.

9. eBay is the owner of numerous U.S. registrations for the marks EBAY and EBAY and Design, the earliest of which was issued on January 19, 1999. These registrations cover a wide variety of goods and services. Each of these registrations is valid, subsisting and has not been abandoned by eBay. eBay has given notice of its registrations by use of the ® symbol and by other means, pursuant to section 29 of the Lanham Trademark Act, 15 U.S.C. § 1111. These registrations include, *inter alia*, the following:

(a) EBAY word mark (Registration No. 2,218,732) registered January 19, 1999 in International Class 35 (online trading services in which seller posts items to be auctioned and bidding is done electronically, and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith);

(b) EBAY and Design (claiming color) (Registration No. 2,410,023) registered December 5, 2000 in International Class 35 (online trading services to facilitate the sale of goods by others via a computer network and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith);

(c) EBAY and Design (Registration No. 2,420,512) registered January 16, 2001 in International Class 35 (on-line trading services to facilitate the sale of goods by others via a computer network and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith);

(d) EBAY and Design (Registration No. 2,468,781) registered July 17, 2001 in International Class 9 (computer e-commerce software to allow users to perform electronic business transactions conducted in the form of an auction via a global computer network and

1 computer software featuring information in the field of hobbies, collectibles and a wide variety of
2 products);

3 (e) EBAY and Design (Registration No. 2,592,514) registered July 9, 2002 in
4 International Class 38 (telecommunications services, namely the electronic transmission of data
5 and information; paging services);

6 (f) EBAY word mark (Registration No. 2,592,515) registered July 9, 2002 in
7 International Class 38 (telecommunications services, namely the electronic transmission of data
8 and information; paging services);

9 (g) EBAY word mark (Registration No. 2,700,675) registered March 25, 2003
10 in International Class 9 (computer e-commerce software to allow users to perform electronic
11 business transactions conducted in the form of an auction via a global computer network and
12 computer database software featuring information in the field of hobbies, collectibles and a wide
13 variety of products);

14 (h) EBAY and Design (Registration No. 2,735,542) registered July 8, 2003 in
15 International Class 38 (providing an online, interactive bulletin board for the transmission of
16 messages among computer users concerning hobbies, collectibles, trading, and the sale of items
17 via a global computer network);

18 (i) EBAY word mark (Registration No. 2,744,717) registered July 29, 2003 in
19 International Class 38 (providing an online, interactive bulletin board for the transmission of
20 messages among computer users concerning hobbies, collectibles, trading, and the sale of items
21 via a global computer network);

22 (j) EBAY and Design (Registration No. 2,759,146) registered September 2,
23 2003 in International Class 9 (CD ROMs and compact discs featuring information in the fields of
24 hobbies, collecting and auctions; and

25 (k) EBAY word mark (Registration No. 2,759,150) registered September 2,
26 2003 in International Class 9 (pre-recorded audio tapes, CD ROMs, compact discs, audio discs,
27 video discs, and video tapes featuring information in the fields of hobbies, collecting and
28 auctions).

1 10. In addition, eBay owns a number of U.S. registrations and pending U.S.
2 applications to register marks that incorporate the EBAY or EBAY and Design marks, each of
3 which marks currently is in use in U.S. commerce. All of eBay's marks that consist of or
4 incorporate the term EBAY will hereafter be referred to as the "EBAY Marks."

5 11. EBAY is a fanciful mark, and thus highly distinctive. The term BAY has no
6 descriptive meaning as applied to an online marketplace or any of the other goods and services
7 covered by eBay's registrations or in connection with which eBay uses the EBAY Marks.

8 12. eBay has expended considerable effort and expense in promoting the EBAY
9 Marks, and goods and services offered in connection with these marks, both in the United States
10 and internationally, typically spending hundreds of millions of dollars in advertising per year.

11 13. In addition to its own advertising efforts, eBay has been the subject of thousands
12 of unsolicited stories in television, radio, and print media, highlighting eBay's innovative and
13 successful efforts in online person-to-person trading. eBay has also received numerous awards
14 and recognitions, including a listing in Nielsen's Top 10 Web Brands (ranking eBay 4th) in
15 December 2006; BusinessWeek's "The Global Brand Scoreboard's The Top 100 Brands"
16 (ranking eBay's brand as the 48th strongest brand in the world) in August 2007; Fortune
17 magazine's "Top 100 Fastest Growing Companies" (ranking eBay as 8th) in August 2003;
18 BusinessWeek Online, "The eBay Economy" in August 2003; Red Herring magazine's "The Top
19 100 Companies Most Likely to Change the World" in May 2001; Harvard Business School's
20 "Entrepreneurial Company of the Year" in May 2000; Forbes magazine's "Favorite Auction Site"
21 in December 1999; Business Week magazine's "Info Tech 100" in July 1999; Ad Week
22 magazine's "Top Marketers of the Year" in May 1999; and The Webby Award's "Top E-
23 Commerce Site" in March 1999.

24 14. The enthusiasm for eBay's services abroad has been so overwhelming that eBay
25 maintains separate, country-specific Web sites for Australia, Austria, Belgium, Canada, China,
26 France, Germany, Hong Kong, India, Ireland, Italy, Malaysia, the Netherlands, New Zealand,
27 Singapore, Spain, South Africa, Sweden, Switzerland, United Arab Emirates, and the United
28 Kingdom, and it has related Web sites in Argentina, Brazil, Chile, Colombia, Costa Rica,

1 Dominica, Ecuador, Korea, Mexico, Panama, Peru, Taiwan, Uruguay, and Venezuela. eBay's
2 services are not limited to these foreign countries, however, as eBay serves customers and has
3 registered users from practically every jurisdiction around the globe.

4 15. As a result of eBay's widespread use of the EBAY Marks worldwide, extensive
5 Internet, television, and print advertising and promotion, continuous and unsolicited media
6 coverage, the high degree of consumer recognition of the EBAY Marks, the strong and loyal base
7 of customers that eBay enjoys for its services, and the absence of any material use of any highly
8 similar mark by others, among other factors, the EBAY Marks are famous within the meaning of
9 Section 43(c) of the United States Trademark Act, 15 U.S.C. §1125(c).

10 **DISTINCTIVENESS OF THE TERM "BAY"**

11 16. The dominant component of the famous EBAY Marks is the term BAY, which is
12 arbitrary and highly distinctive in the context of an online marketplace.

13 17. Following on the fame and success of eBay, a number of operators of other online
14 marketplaces and Internet sites have attempted to adopt names and marks that combine the
15 generic term for what the particular site offers or provides with the distinctive BAY suffix of the
16 EBAY Marks, to create a "generic plus BAY" mark. Examples of such marks, the use of which
17 eBay has successfully put a stop to, include: ALTERNABAY (site offering goods related to
18 alternative lifestyles), AUTOBAY (site advertising automobiles for sale), BOATBAY (site
19 offering a "nautical search portal"), BRICKBAY (site offering Lego® bricks), CARBAY (site
20 advertising automobiles for sale), COINBAY (online coin marketplace), EGGBAY (site offering
21 items for egg farmers), EMERGENCYBAY (site offering emergency rescue goods), FOTOBAY
22 (site offering photography-related goods and services), JEWELRYBAY (site offering diamonds
23 and fine jewelry), MEXBAY (Mexican-themed site), MILITARYBAY (site offering military
24 goods), NAZIBAY (site offering Nazi memorabilia), SELLINGBAY (site listing auctions,
25 classifieds, and want ads), and SWAYBAY (site offering surfing related products), among others.

26 18. The United States Patent and Trademark Office ("PTO") has recognized that the
27 dominant component of the EBAY Marks is the term BAY, refusing third-party registrations on
28

1 the ground that the use of BAY combined with a generic or descriptive term is likely to cause
2 confusion with the EBAY Marks.

3 19. For example, in an Office Action dated June 21, 2005, in Application Serial No.
4 78/516,920 for the mark FLEABAY for "flea markets," the PTO refused registration because
5 "applicant's mark, when used on or in connection with the identified goods or services, so
6 resembles the marks in U.S. Registration Nos. 2218732, 2420512, 2218732, 2514362, 2555505
7 and 2913227 (all owned by [eBay]) as to be likely to cause confusion, to cause mistake, or to
8 deceive." A true and correct copy of that Office Action is attached hereto as Exhibit A.

9 20. Similarly, in an Office Action dated August 24, 2005, in Application Serial No.
10 78/552,094 for the mark BAY BAZAAR for "[b]usiness management assistance and particularly
11 carrying out tasks necessary for the smooth conduct of sales by auction," the PTO refused
12 registration "because of a likelihood of confusion with the marks in U.S. Registration Nos.
13 2555505, 2218732, 2410023 and 2420512," all of which are owned by eBay. A true and correct
14 copy of that Office Action is attached hereto as Exhibit B.

15 21. The PTO has also recognized the distinctiveness of the BAY component in
16 refusing registration to the following marks in light of the EBAY mark: IBAY (Serial No.
17 76/195,016) and TBAY AUCTION (Serial No. 78/059,732).

18 22. Likewise, the Court of Appeals for the Ninth Circuit has recognized the
19 distinctiveness of the BAY component of the EBAY Marks. In its opinion in the matter of
20 *Perfumebay.com Inc. v. eBay Inc.*, 506 F.3d 1165 (9th Cir. 2007), the court held that the term
21 "BAY" was the dominant aspect of the EBAY marks, and that with the use of the mark
22 PERFUMEBAY in connection with an online marketplace specializing in perfume, "consumers
23 may no longer associate the usage of the "Bay" suffix with eBay's unique services, specifically
24 the sale of products on an internet-based marketplace. The uniqueness of eBay's mark is diluted
25 in direct proportion to the extent consumers, particularly internet users, disassociate the eBay
26 mark with eBay's services."

27 23. If others could freely use "generic plus BAY" marks for Web sites offering or
28 advertising whatever the generic thing is, the suffix BAY could become a generic term for

1 “online marketplace” or “site offering things for purchase or use.” That would dilute the
2 distinctiveness of the famous EBAY Marks to the point that they cease to function as unique and
3 distinctive identifiers of eBay’s goods or services, to eBay’s severe detriment.

4 **DEFENDANT’S USE OF THE TELEBAY NAME AND MARK**

5 24. Defendant uses the TELEBAY Mark in commerce in connection with an online
6 Web site, available at the Uniform Resource Locator (“URL”) <http://www.telebay.com> that
7 specializes in telecommunications-related services. Defendant’s TELEBAY Mark (including as
8 used in connection with the TELEBAY.COM Web site) and TELEBAY.COM domain name are
9 referred to collectively herein as the “TELEBAY Mark.”

10 25. Among the products and services featured on or accessible from the
11 TELEBAY.COM Web site are cell phones, cell phone accessories and pre- and post-paid cell
12 phone service plans, as well as local and long distance telephone service. Defendant uses the
13 TELEBAY mark in connection with offering and/or promoting the aforementioned goods and
14 services. Attached as Exhibit C is a true and correct copy of the TELEBAY.COM home page as
15 it appeared on March 12, 2008. Attached as Exhibit D is a true and correct copy of other relevant
16 pages accessible via direct link from the TELEBAY.COM home page as they appeared on March
17 6, 2008.

18 26. The TELEBAY.COM Web site also contains a “mall” feature that links to third-
19 party on-line retail stores featuring a variety of products and services, including electronics, gifts,
20 collectibles, music, and automobile products, and financial, business and travel services.
21 Attached hereto as Exhibit E is a true and correct copy of the “mall” located on Defendant’s Web
22 site at the URL <http://www.telebaymall.com/index.php?viewCat=2&ID=telebay>, as it appeared
23 on March 6, 2008.

24 27. Defendant’s TELEBAY Mark is substantially similar to the EBAY Marks. For
25 example, Defendant’s TELEBAY Mark consists of the elements “tel” and “ebay.” “Tel” is
26 shorthand for “telephone,” which is highly descriptive or generic of Defendant’s services. Thus,
27 Defendant’s TELEBAY Mark consists of the highly descriptive and/or generic component “tel,”
28 and eBay’s EBAY mark in its entirety.

1 28. Moreover, the TELEBAY Mark follows the same pattern as the many “generic
2 plus BAY” marks that surfaced following the success of eBay. The term “tele” is highly
3 descriptive or generic of Defendant’s services (i.e., the promotion of products and services
4 offered and ordered on-line or by phone), and thus does little to create a unique commercial
5 impression. In contrast with the weak “tele” prefix of Defendant’s TELEBAY Mark, the term
6 “bay” in “telebay” pilfers the most distinctive part of the EBAY marks, and is completely
7 arbitrary as applied to Defendant’s services. As such, the only conceivable reason to incorporate
8 “bay” into Defendant’s Mark is that Defendant, as an on-line promoter of goods and services,
9 intends to call to mind the EBAY Marks. Thus, by combining the generic or descriptive term
10 TELE with the arbitrary term BAY – the dominant and most distinctive part of the designation
11 EBAY – Defendant has created a “generic plus BAY” mark, which calls to mind eBay and
12 suggests “the eBay for telephone services.”

13 29. The services offered under the TELEBAY Mark are similar to those provided by
14 eBay. For example, just as eBay makes available a variety of goods and services—including
15 telecommunications-related goods and services—through listings on its Web site, Defendant
16 similarly purports to provide an Internet Web site that features telecommunications goods and
17 services, and also functions as an on-line “mall” for similar goods and services.

18 30. Based on the similarities between eBay’s EBAY Marks, which are famous, and
19 Defendant’s TELEBAY Mark, it is apparent that Defendant intends to call to mind the EBAY
20 Marks.

21 31. Defendant’s mark also creates a false suggestion of an affiliation or connection
22 with eBay.

23 32. However, eBay is not affiliated or connected with Defendant, or with the services
24 Defendant provides under the TELEBAY Mark.

25 33. Defendant has refused to cease its infringing use of the TELEBAY Mark despite
26 eBay’s express objection. Rather, Defendant has suggested that eBay should pay Defendant
27 “restitution” in exchange for the TELEBAY.COM domain name.
28

34. On information and belief, based on records available from the internet archive service available at the URL <http://www.archive.org>, Defendant launched the TELEBAY.COM Web site on or about August 2003. Accordingly, there is no issue as to priority of use. eBay began using its EBAY mark, and enjoys priority as a result of the filing dates of its trademark registrations, well prior to Defendant's use of the TELEBAY Mark. Further, the EBAY Marks acquired wide recognition in the general consuming public, and became famous, well prior to Defendant's use of the TELEBAY Mark.

FIRST CAUSE OF ACTION

(FEDERAL TRADEMARK INFRINGEMENT)

35. eBay incorporates by reference paragraphs 1 through 34, inclusive, as if fully set forth here.

36. The TELEBAY Mark is highly similar to the registered EBAY Marks in appearance, sound, meaning, and commercial impression.

37. Defendant's services are related to eBay's services.

38. Both eBay and Defendant offer their services through the same channel of trade, i.e., the Internet.

39. The instantaneous nature of Internet navigation, the speed at which people navigate and are presented with advertisements, images and/or data on the Internet, and the speed at which consumers perform transactions on the Internet, all tend to increase the risk of confusion or mistake about the source of a product or service.

40. On information and belief, Defendant adopted the TELEBAY Mark with knowledge of, and the intent to call to mind, create a likelihood of confusion with regard to, and/or trade off the fame of eBay and the registered EBAY Marks.

41. Defendant continues to use the TELEBAY Mark despite eBay's express objection thereto.

42. Defendant's continued use of the TELEBAY Mark will injure eBay by causing a likelihood that the public will be confused or mistaken into believing that the goods or services provided by Defendants are endorsed or sponsored by eBay.

1 43. eBay has no control over the nature and quality of the goods or services offered by
2 Defendant under the TELEBAY Mark, and eBay's reputation and goodwill will be damaged and
3 the value of eBay's registered marks jeopardized by Defendant's continued use of Defendant's
4 name and marks. Because of the likelihood of confusion between the parties' marks, defects,
5 objections, or faults found with Defendant's services marketed under the TELEBAY Mark could
6 negatively reflect upon and injure the reputation that eBay has established for the services it
7 offers in connection with the registered EBAY Marks. As such, Defendants are liable to eBay for
8 infringement of a registered mark under 15 U.S.C. §1114.

9 44. Defendant's acts as alleged above, if not enjoined, will continue. eBay has no
10 adequate remedy at law in that the amount of its damages is difficult to ascertain with specificity.

11 45. As a result of Defendant's infringement of eBay's registered marks, eBay has
12 incurred damages in an amount to be proven at trial consisting of, among other things, diminution
13 in the value of and goodwill associated with the marks.

14 46. Defendant's infringement of eBay's registered marks is deliberate, willful,
15 fraudulent and without any extenuating circumstances, and constitutes a knowing use of eBay's
16 marks and an exceptional case within the meaning of Lanham Act section 35, 15 U.S.C. § 1117.
17 eBay is therefore entitled to recover three times the amount of its actual damages and the
18 attorneys' fees and costs incurred in this action, and prejudgment interest.

19 **SECOND CAUSE OF ACTION**

20 **(FEDERAL TRADEMARK DILUTION)**

21 47. eBay incorporates by reference paragraphs 1 through 46, inclusive, as if fully set
22 forth here.

23 48. As a result of the considerable publicity afforded the EBAY Marks, and the strong
24 and loyal base of customers that eBay enjoys for its services, the EBAY Marks have a high
25 degree of consumer recognition, are widely recognized by the general consuming public of the
26 United States as a designation of eBay's services, and are famous.

27 49. The EBAY Marks became famous before Defendant adopted the TELEBAY
28 Mark.

50. The TELEBAY Mark incorporates the most distinctive part of the EBAY Marks, i.e., BAY, and also contains the entire EBAY mark, and thus its use is likely to cause an association between the TELEBAY Mark and the EBAY Marks that impairs the distinctiveness of the EBAY Marks and weakens the connection in consumers' minds between the EBAY Marks and eBay's services. Defendant's use of the TELEBAY Mark is likely to cause dilution by blurring based on a number of relevant considerations, including:

(a) The TELEBAY Mark contains the entire EBAY mark and the marks in their entireties are similar, and the TELEBAY Mark is similar to the EBAY Marks in that the dominant elements of the marks are identical:

(b) The EBAY Marks are inherently distinctive;

(c) eBay is engaging in substantially exclusive use of the EBAY Marks;

(d) The EBAY Marks are widely recognized by the general consuming public;

(e) On information and belief, Defendant intended to create an association with the EBAY Marks.

51. Defendant's acts as alleged above, if not enjoined, will continue. eBay has no adequate remedy at law in that the amount of its damages is difficult to ascertain with specificity.

52. As a result of Defendant's acts as alleged above, eBay has incurred damages in an amount to be proven at trial consisting of, among other things, diminution in the value of the goodwill associated with the EBAY Marks.

53. Defendant's wrongful use of the TELEBAY Mark is deliberate, willful, fraudulent and without any extenuating circumstances, and constitutes a willful intent to trade on eBay's reputation or to cause dilution of the famous EBAY Marks and an exceptional case within the meaning of Lanham Act section 35, 15 U.S.C. § 1117. eBay is therefore entitled to recover three times the amount of its actual damages and the attorneys' fees and costs incurred in this action, and prejudgment interest.

THIRD CAUSE OF ACTION

(FEDERAL FALSE DESIGNATION OF ORIGIN)

54. eBay incorporates by reference paragraphs 1 through 53, inclusive, as if fully set

1 forth here.

2 **55.** In connection with Defendant's services, Defendant has used in commerce and
3 without eBay's authorization or consent the TELEBAY Mark, which are highly similar to the
4 registered EBAY Marks in appearance, sound, meaning, and commercial impression.

5 **56.** Such acts are likely to cause confusion and deception among the purchasing public
6 and/or are likely to lead the consuming public to believe that eBay has authorized, approved or
7 somehow sponsored Defendant's use of the TELEBAY Mark in connection with Defendant's
8 goods and services.

9 **57.** The aforesaid wrongful acts of Defendant constitute the use of a false designation
10 of origin and false description or representation, all in violation of 15 U.S.C. § 1125(a).

11 **58.** Defendant's false designation of origin and false description through Defendant's
12 use of the TELEBAY Mark has caused, and if not enjoined will continue to cause, irreparable and
13 continuing harm to eBay's marks, business, reputation, and good will, for which eBay has no
14 adequate remedy at law.

15 **59.** As a direct and proximate result of Defendant's wrongful use of the TELEBAY
16 Mark, eBay has been and will continue to be damaged by, without limitation, the diminution in
17 the value of its trademarks, reputation, business and good will in an amount to be proven at trial.

18 **60.** Defendant's wrongful use of the TELEBAY Mark is deliberate, willful, fraudulent
19 and without any extenuating circumstances, and constitutes a knowing use of eBay's Marks and
20 an exceptional case within the meaning of Lanham Act section 35, 15 U.S.C. § 1117. eBay is
21 therefore entitled to recover three times the amount of its actual damages and the attorneys' fees
22 and costs incurred in this action, and prejudgment interest.

23 **FOURTH CAUSE OF ACTION**

24 **(COMMON LAW TRADEMARK INFRINGEMENT)**

25 **61.** eBay incorporates by reference paragraphs 1 through 60, inclusive, as if fully set
26 forth here.

62. Defendant's acts alleged herein and specifically, without limitation, Defendant's use of the TELEBAY Mark, infringe eBay's exclusive trademark rights in the EBAY Marks, in violation of the common law.

63. Defendant's acts as alleged above, if not enjoined, will continue. eBay has no adequate remedy at law in that the amount of its damages is difficult to ascertain with specificity.

64. As a result of Defendant's acts as alleged above, eBay has incurred damages in an amount to be proven at trial consisting of, among other things, diminution in the value of the goodwill associated with eBay's marks.

FIFTH CAUSE OF ACTION

(COMMON LAW UNFAIR COMPETITION)

65. eBay incorporates by reference paragraphs 1 through 64, inclusive, as if fully set forth here.

66. Defendant has engaged in and continues to engage in unfair competition by using the TELEBAY Mark, on information and belief, with the intention of interfering with and trading on the business reputation and goodwill engendered by eBay through hard work and diligent effort.

67. Defendant's acts have caused eBay competitive injury, as described herein, and specifically have caused eBay to incur damages in an amount to be proven at trial consisting of, among other things, diminution in the value of and goodwill associated with eBay's marks.

68. Defendant's acts as alleged above, and specifically, without limitation, Defendant's use of the TELEBAY Mark, if not enjoined, will continue. eBay has no adequate remedy at law in that the amount of its damages is difficult to ascertain with specificity.

SIXTH CAUSE OF ACTION

(TRADEMARK INFRINGEMENT UNDER CAL. BUS. & PROF. CODE § 14245)

69. eBay incorporates by reference paragraphs 1 through 68, inclusive, as if fully set forth here.

70. Defendant's acts alleged herein and specifically, without limitation, Defendant's use of the TELEBAY Mark, infringe eBay's exclusive trademark rights in eBay's marks, in violation of California Business and Professions Code section 14245.

71. Defendant's acts as alleged above, if not enjoined, will continue. eBay has no adequate remedy at law in that the amount of its damages is difficult to ascertain with specificity.

SEVENTH CAUSE OF ACTION

(TRADEMARK DILUTION UNDER CAL. BUS. & PROF. CODE § 14247)

72. eBay incorporates by reference paragraphs 1 through 71, inclusive, as if fully set forth here.

73. The EBAY Marks are distinctive and famous within the meaning of section 14247 of the California Business and Professions Code.

74. Defendant's use of the TELEBAY Mark began after the EBAY Marks became famous.

75. Defendant's continued use of the TELEBAY Mark is likely to cause injury to eBay's business reputation and/or the dilution of the distinctive quality of eBay's famous EBAY Marks, in violation of California Business and Professions Code section 14247.

76. Defendants' acts as alleged above, if not enjoined, will continue. eBay has no adequate remedy at law in that the amount of its damages is difficult to ascertain with specificity.

EIGHTH CAUSE OF ACTION

(UNFAIR COMPETITION UNDER CAL. BUS. & PROF. CODE §§ 17200, *ET SEQ.*)

77. eBay incorporates by reference paragraphs 1 through 76, inclusive, as if fully set forth here.

78. By the acts described herein, Defendant has engaged in unlawful and unfair business practices that have injured and will continue to injure eBay in its business and property, in violation of California Business and Professions Code §§ 17200 *et seq.*

79. Defendants' acts alleged herein have caused monetary damages to eBay in an amount to be proven at trial, and have caused, and will continue to cause, irreparable injury to eBay and its business, reputation, and trademarks, unless and until Defendant is permanently

enjoined.

80. As a direct and proximate result of Defendant's conduct alleged herein, Defendant has been unjustly enriched and should be ordered to disgorge any and all profits that it earns or has earned as a result of such unlawful conduct.

PRAYER FOR RELIEF

WHEREFORE, eBay prays:

81. That this Court grant preliminary and permanent injunctive relief enjoining Defendants and all others acting in concert with and having knowledge thereof, from using the TELEBAY Mark, and any similar trade name or mark or variant thereof, or other "generic plus BAY" mark, as a trade name, trademark, service mark, domain name, or for any other purpose;

82. That this Court order Defendants to account to eBay any and all revenues and profits that Defendants have derived from their wrongful actions and to pay all damages which eBay has sustained by reason of the acts complained of herein, and that such damages be trebled;

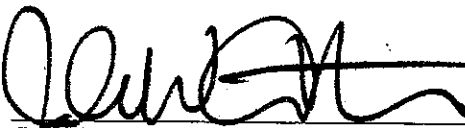
83. That this Court award eBay the costs of this action and reasonable attorney's fees and expenses;

84. That the Court order the Registrar of the TELEBAY.COM domain name to cancel the registration.

85. That this Court grant such other and further relief as it should deem just.

Dated: March 14, 2008

COOLEY GODWARD KRONISH LLP
JOHN W. CRITTENDEN (101634)
FRANK B. GOLDBERG (222263)
KATHLEEN E. TREIBER (232353)



John W. Crittenden (101634)
Attorneys for Plaintiff
EBAY INC.

To: Miarko, Inc. (DSteele@Hemmerlaw.com)
Subject: TRADEMARK APPLICATION NO. 78516920 - FLEABAY - N/A
Sent: 6/21/2005 9:52:37 AM
Sent As: ECOM103@USPTO.GOV
Attachments: Attachment - 1
Attachment - 2
Attachment - 3
Attachment - 4
Attachment - 5
Attachment - 6
Attachment - 7
Attachment - 8
Attachment - 9
Attachment - 10
Attachment - 11
Attachment - 12
Attachment - 13
Attachment - 14
Attachment - 15
Attachment - 16
Attachment - 17

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/516920

APPLICANT: Miarko, Inc.

78516920

CORRESPONDENT ADDRESS:

DAVID H. STEELE
HEMMER PANGBURN DEFRANK PLLC
SUITE 200
250 GRANDVIEW DRIVE
FORT MITCHELL, KY 41017

RETURN ADDRESS:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MARK: FLEABAY

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

CORRESPONDENT EMAIL ADDRESS:

DSteele@Hemmerlaw.com

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

Serial Number 78/516920

The assigned examining attorney has reviewed the referenced application and determined the following:

LIKELIHOOD OF CONFUSION – SECTION 2(d)

The examining attorney refuses registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), because the applicant's mark, when used on or in connection with the identified goods or services, so resembles the marks in U.S. Registration Nos. 2218732, 2420512, 2218732, 2514362, 2555505 and 2913227 (all owned by the same registrant) as to be likely to cause confusion, to cause mistake, or to deceive. TMEP section 1207. See the attached registrations.

The examining attorney must analyze each case in two steps to determine whether there is a likelihood of confusion. First, the examining attorney must look at the marks themselves for similarities in appearance, sound, connotation and commercial impression. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Second, the examining attorney must compare the goods or services to determine if they are related or if the activities surrounding their marketing are such that confusion as to origin is likely. *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re International Telephone and Telegraph Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Products Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978).

In this case, the applicant's mark is "FLEABAY" in standard character format for "flea markets."

The marks in the above-cited registrations are all variations of the mark "eBay." They are as follows, respectively:

1. "EBAY" in typed format for "on-line trading services in which seller posts items to be auctioned and bidding is done electronically, and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith"
2. "EBAY" in stylized lettering for "On-line trading services to facilitate the sale of goods by others via a computer network and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith"
3. "EBAY" in stylized lettering with the colors red, blue, yellow, green, purple, orange and brown (the last letter "y" being in green, like the applicant's proposed mark) for "On-line trading services to facilitate the sale of goods by others via a computer network and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith"

- h. "EBAY POWER SELLERS" with a circular design for "Providing customer support services concerning online account management and use of online services; and Providing dedicated technical assistance"
- i. "EBAY PREMIER" in typed format for "on-line trading services in which seller posts items to be sold at a set price, or alternatively to be offered in an auction-style format where bidding is done electronically, and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods, buyers' and sellers' performance, delivery and overall trading experience in connection therewith"
- j. "EBAY LIVE!" in standard character format for "arranging and conducting trade shows and exhibitions in the field of online trading services."

The applicant's proposed mark "FLEABAY" is confusingly similar to all of these registered marks because it is very similar to them in sound, appearance and meaning. First, the dominant portion of the marks, "BAY," is identical. The marks are compared in their entireties under a Section 2(d) analysis. Nevertheless, one feature of a mark may be recognized as more significant in creating a commercial impression. Greater weight is given to that dominant feature in determining whether there is a likelihood of confusion. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985); *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693 (C.C.P.A. 1976). *In re J.M. Originals Inc.*, 6 USPQ2d 1393 (TTAB 1987); TMEP §1207.01(b)(viii).

In this case, the term "flea" in applicant's mark is clearly descriptive because the applicant's services – as shown by the identification of services – are flea markets. In the registered marks, the prefix "e" is descriptive in that it has become commonly recognized as a designation for goods or services that are electronic in nature or are sold or provided electronically. Please see the attached dictionary definition from *Encarta World English Dictionary*, online edition, which is attached to this office action. The additional wording in the registrant's other marks are all descriptive or weak so that "BAY" is the consistent dominant feature of registrant's marks. For these reasons, the term "BAY" is clearly the dominant portion of applicant's mark and the cited registered marks.

In addition to sharing the identical dominant element, the marks also share a very similar appearance. The fact that applicant's mark is in standard characters while some of the cited registrant's marks are not does not obviate this refusal. To the contrary, it supports it. Registration of a mark in typed or standard character form means that the mark may be displayed in any lettering style. 37 C.F.R. §2.52(a). The rights associated with a mark in typed or standard character form reside in the wording itself, and applicant is free to adopt any style of lettering, including lettering identical to that used by the registrant. Therefore, presentation of a mark in special form will not avoid likelihood of confusion with a mark that is registered in typed or standard character form because the marks presumably could be used in the same manner of display. See *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991); *In re Pollio Dairy Prods. Corp.*, 8 USPQ2d 2012 (TTAB 1988); *Sunnen Prods. Co. v. Sunex Int'l Inc.*, 1 USPQ2d 1744, 1747 (TTAB 1987); *In re Hester Indus., Inc.*, 231 USPQ 881, 882, 1.6 (TTAB 1986); *United Rum Merchants, Ltd. V. Fregal, Inc.*, 216 USPQ 217 (TTAB 1982); *Frances Denney, Inc. v. Vive Parfums, Ltd.*, 190 USPQ 302 (TTAB 1976); See also TMEP §1207.01(c)(iii).

For all of these reasons, the marks create a very similar commercial impression.

The services here are closely related because they overlap, are marketed in the same trade channels and it is quite conceivable for the registrant to expand into flea market services, which are the applicant's services. Any goods or services in the registrant's normal fields of expansion must also be considered in order to determine whether the registrant's goods or services are related to the applicant's identified goods or services for purposes of analysis under Section 2(d). *In re General Motors Corp.*, 196 USPQ 574 (TTAB 1977). The test is whether purchasers would believe the product or service

s within the registrant's logical zone of expansion. *CPG Prods. Corp. v. Perceptual Play, Inc.*, 221 USPQ 88 (TTAB .983); TMEP §1207.01(a)(v). As flea markets could be easily conducted online, like other online retail and wholesale services, the average consumer would likely believe that these services are within the registrant's logical zone of expansion.

Taken together, the close similarity of the marks and the close relationship of the services necessitate that registration for the proposed mark be refused. Although the trademark examining attorney has refused registration, applicant may respond to the refusal to register by submitting evidence and arguments in support of registration. If applicant chooses to respond to the refusal(s) to register, then applicant must also respond to the following requirement.

Please note that there is no required format or form for responding to this Office action. However, applicant should include the following information on all correspondence with the Office: (1) the name and law office number of the examining attorney; (2) the serial number of this application; (3) the mailing date of this Office action; and, (4) applicant's telephone number.

When responding to this Office action, applicant must make sure to respond in writing to each refusal and requirement raised. If there is a refusal to register the proposed mark, then applicant may wish to argue against the refusal, i.e., explain why it should be withdrawn and why the mark should register. If there are other requirements, then applicant should simply set forth in writing the required changes or statements and request that the Office enter them into the application record. Applicant must also sign and date its response.

/Susan Stiglitz/

Trademark Examining Attorney

USPTO

Law Office 103

(571) 272-9285

HOW TO RESPOND TO THIS OFFICE ACTION:

- **ONLINE RESPONSE:** You may respond formally using the Office's Trademark Electronic Application System (TEAS) Response to Office Action form (visit <http://www.uspto.gov/teas/index.html> and follow the instructions, but if the Office Action has been issued via email, you must wait 72 hours after receipt of the

Office Action to respond via TEAS).

- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above and include the serial number, law office number and examining attorney's name in your response.

STATUS OF APPLICATION: To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov>.

VIEW APPLICATION DOCUMENTS ONLINE: Documents in the electronic file for pending applications can be viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

GENERAL TRADEMARK INFORMATION: For general information about trademarks, please visit the Office's website at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.

Print: Jun 21, 2005

75391661

TYPED DRAWING

Serial Number

75391661

Status

REGISTERED

Word Mark

EBAY

Standard Character Mark

No

Registration Number

2218732

Date Registered

1999/01/19

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

eBay Inc. CORPORATION CALIFORNIA 2005 Hamilton Avenue, Suite 350 San Jose CALIFORNIA 95125

Goods/Services

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: on-line trading services in which seller posts items to be auctioned and bidding is done electronically, and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith. First Use: 1995/09/04. First Use In Commerce: 1995/09/04.

Filing Date

1997/11/17

Examining Attorney

UNKNOWN

Attorney of Record

LARISSA A.J. KEHOE

Print: Jun 21, 2005

75587191

DESIGN MARK

Serial Number

75587191

Status

REGISTERED

Word Mark

EBAY

Standard Character Mark

No

Registration Number

2420512

Date Registered

2001/01/16

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

eBay, Inc. CORPORATION DELAWARE 2125 Hamilton Avenue San Jose
CALIFORNIA 95125

Goods/Services

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: On-line trading services to facilitate the sale of goods by others via a computer network and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith. First Use: 1998/01/15. First Use In Commerce: 1998/01/15.

Prior Registration(s)

2218732

Filing Date

1998/11/12

Examining Attorney

MERCALDI, ANTHONY

Print: Jun 21, 2005

75587191

Attorney of Record

Larissa A J Kehoe

eBay

Print: Jun 21, 2005

75669553

DESIGN MARK

Serial Number

75669553

Status

REGISTERED

Word Mark

EBAY

Standard Character Mark

No

Registration Number

2410023

Date Registered

2000/12/05

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Owner

eBay Inc. CORPORATION DELAWARE 2125 Hamilton Avenue San Jose
CALIFORNIA 95125

Goods/Services

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: On-line trading services to facilitate the sale of goods by others via a computer network and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith. First Use: 1998/01/15. First Use In Commerce: 1998/01/15.

Prior Registration(s)

2218732

Lining/Stippling Statement

The mark is lined for red, blue, yellow, green, purple, orange and brown.

Filing Date

1999/03/29

Print: Jun 21, 2005

75669553

Examining Attorney

MERCALDI, ANTHONY

Attorney of Record

LARISSA A.J. KEHOE

copy

Print: Jun 21, 2005

76002885

DESIGN MARK

Serial Number

76002885

Status

REGISTERED

Word Mark

EBAY POWER SELLERS

Standard Character Mark

No

Registration Number

2514362

Date Registered

2001/12/04

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

eBay Inc. CORPORATION DELAWARE 2145 Hamilton Avenue San Jose
CALIFORNIA 95125

Goods/Services

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: Providing customer support services concerning online account management and use of online services. First Use: 1999/06/00. First Use In Commerce: 1999/06/00.

Goods/Services

Class Status -- ACTIVE. IC 042. US 100 101. G & S: Providing dedicated technical assistance. First Use: 1999/06/00. First Use In Commerce: 1999/06/00.

Filing Date

2000/03/17

Examining Attorney

KOVALSKY, LAURA

Attorney of Record

Print: Jun 21, 2005

76002885

Larissa A.J. Kehoe



Print: Jun 21, 2005

76184915

DESIGN MARK

Serial Number

76184915

Status

REGISTERED

Word Mark

EBAY PREMIER

Standard Character Mark

No

Registration Number

2555505

Date Registered

2002/04/02

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

eBay Inc. CORPORATION DELAWARE 2145 Hamilton Avenue San Jose
CALIFORNIA 95125

Goods/Services

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: on-line trading services in which seller posts items to be sold at a set price, or alternatively to be offered in an auction-style format where bidding is done electronically, and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods, buyers' and sellers' performance, delivery and overall trading experience in connection therewith. First Use: 2001/01/04. First Use In Commerce: 2001/01/04.

Prior Registration(s)

2218732;2410023;2420512

Description of Mark

The mark features the following color "e" in red, overlapping "e" and "b" section in purple, "b" in blue, overlapping "b" and "a" section in orange, "a" in yellow, overlapping "a" and "y" section in brown, "y" in green, and two color dashes above the "i" in yellow and light blue.

Print: Jun 21, 2005

76184915

Filing Date

2000/12/21

Examining Attorney

KHAN, ASMAT

Attorney of Record

Larissa Kehoe Hoffman

eBay Premier

Print: Jun 21, 2005

78339332

DESIGN MARK

Serial Number

78339332

Status

REGISTERED

Word Mark

EBAY LIVE!

Standard Character Mark

Yes

Registration Number

2913227

Date Registered

2004/12/21

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

eBay Inc. CORPORATION DELAWARE 2145 Hamilton Avenue San Jose
CALIFORNIA 95125

Goods/Services

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: arranging
and conducting trade shows and exhibitions in the field of online
trading services. First Use: 2002/06/01. First Use In Commerce:
2002/06/01.

Filing Date

2003/12/11

Examining Attorney

GRAY, CAROLYN

Attorney of Record

Francine M. Hanson

EBAY LIVE!

://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861607175
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"I use the
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many ways."



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REAL REASONS TO BUY.

Dictionary

Thesaurus

Translations *

Dzongkha
Dzungaria

E (1)

E (2)

E (3)

e (1)

e (2)

e (3)

e-

e.

e-beam

e-biz

e-blocker

E-boat

e-bomb

e-book

e-

e-

prefix

1. electronic

• e-mail

2. electronic data transfer via the Internet

• e-commerce

[Abbreviation of electronic]

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MSN Shopping



Beach Sport Skimmer Skirt
\$45.00
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EXHIBIT B

To: Grow America Corporation (albertkeyack@yahoo.com)
Subject: TRADEMARK APPLICATION NO. 78552094 - BAY BAZAAR - MOSES-4
Sent: 8/24/05 5:43:22 PM
Sent As: ECOM114@USPTO.GOV
Attachments: Attachment - 1
Attachment - 2
Attachment - 3
Attachment - 4
Attachment - 5
Attachment - 6
Attachment - 7
Attachment - 8
Attachment - 9
Attachment - 10

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/552094

APPLICANT: Grow America Corporation

78552094

CORRESPONDENT ADDRESS:

ALBERT T. KEYACK
ALBERT T. KEYACK
1005 GLENDEVON DRIVE
AMBLER, PA 19002

RETURN ADDRESS:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MARK: BAY BAZAAR

CORRESPONDENT'S REFERENCE/DOCKET NO: MOSES-4

CORRESPONDENT EMAIL ADDRESS:

albertkeyack@yahoo.com

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

Serial Number 78/552094

The assigned examining attorney has reviewed the referenced application and determined the following.

Section 2(d) - Likelihood of Confusion Refusal

Registration of the proposed mark is refused because of a likelihood of confusion with the marks in U.S. Registration Nos. 1555505, 2218732, 2410023 and 2420512. Trademark Act Section 2(d), 15 U.S.C. §1052(d); TMEP §§1207.01 *et seq.* See the enclosed registrations.

Taking into account the relevant *Du Pont* factors, a likelihood of confusion determination in this case involves a two-part analysis. First, the marks are compared for similarities in appearance, sound, connotation and commercial impression. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973).

Applicant is attempting to register the mark BAY BAZAAR.

Ebay owns registrations for the mark EBAY and EBAY PREMIERE in typed and stylized formats. The wording BAY BAZAAR is similar in sound, appearance and meaning to the term EBAY because both marks incorporate the arbitrary term BAY. While the applicant's mark does not include the descriptive prefix "e" [1] included in the registered marks, the strength of the term "bay" in relation to the prefix "e" dominates the generalized impression left by the registered marks. The other differences between the marks, i.e., the addition of the term BAZAAR, which is descriptive in the context of the services, and the addition of the term PREMIERE in one of the EBAY and the stylization of the wording in some of the EBAY registrations do not

Second, the goods or services are compared to determine whether they are similar or related or whether the activities surrounding their marketing are such that confusion as to origin is likely. *In re National Novice Hockey League, Inc.*, 222 USPQ 638 (TTAB 1984); *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re Int'l Tel. and Tel. Corp.*, 197 USPQ 110 (TTAB 1978); *Guardian Prods. Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); TMEP §§1207.01 *et seq.*

Likelihood of confusion is determined on the basis of the goods or services as they are identified in the application and the registration. *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1690 n.4 (Fed. Cir. 1993); *J & J Snack Foods Corp. v. McDonald's Corp.*, 932 F.2d 460, 18 USPQ2d 1889 (Fed. Cir. 1991); *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990). Since the identification of the applicant's goods and/or services is very broad, it is presumed that the application encompasses all goods and/or services of the type described, including those in the registrant's more specific identification, that they move in all normal channels of trade and that they are available to all potential customers. TMEP §1207.01(a)(iii).

In any event, the goods and/or services of the parties need not be identical or directly competitive to find a likelihood of confusion. Instead, they need only be related in some manner, or the conditions surrounding their marketing be such that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods and/or services come from a common source. *On-line Careline Inc. v. America Online Inc.*, 229 F.3d 1080, 56

JSPQ2d 1471 (Fed. Cir. 2000); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984); *Guardian Prods. Co., Inc. v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); *In re Int'l Tel. & Tel. Corp.*, 197 USPQ 910 (TTAB 1978); TMEP §1207.01(a)(i).

Applicant is attempting to register BAY BAZAAR for "[b]usiness management assistance and particularly carrying out tasks necessary for the smooth conduct of sales by auction."

Presumably, the broadly identified service of "carrying out tasks necessary for the smooth conduct of sales by auction" include the "on-line trading services in which seller posts items to be sold at a set price, or alternatively to be offered in an auction-style format where bidding is done electronically, and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods, buyers' and sellers' performance, delivery and overall trading experience in connection therewith" for which the EBAY marks are registered. Moreover, the business management advice service presumably pertains in large part to the conduct of sales by auction and therefore is likely to be associated by consumers of the trading/auction services with a single source. Accordingly, the use by different parties of marks as similar as applicant's mark and the registered EBAY marks on the listed services is likely to lead to consumer confusion or mistake as to the source of the goods and services.

Any doubt regarding a likelihood of confusion is resolved in favor of the prior registrant. *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 JSPQ2d 1025 (Fed. Cir. 1988); TMEP §§1207.01(d)(i).

If applicant chooses to respond to the refusal(s) to register, then applicant must also respond to the following requirement(s).

Recitation of Services

The wording used to describe the services needs clarification because the service activities that comprise "carrying out tasks necessary for the smooth conduct of sales by auction" must be clarified.

For assistance with identifying goods and/or services in trademark applications, please see the online searchable *Manual of Acceptable Identifications of Goods and Services* at <http://tess2.uspto.gov/netathtml/tidm.html>.

Applicant may adopt the following identification of goods, if accurate:

Business management assistance and particularly carrying out tasks necessary for the smooth conduct of sales by auction, **namely auction management services provided to others over an online web site accessed through a global computer network** in class **35**.

TMEP §1402.01.

Please note that, while the identification of services may be amended to clarify or limit the services, adding to the services or broadening the scope of the services is not permitted. 37 C.F.R. §2.71(a); TMEP §1402.06. Therefore, applicant may not amend the identification to include services that are not within the scope of the services set forth in the present identification.

Disclaimers

Applicant must disclaim the descriptive wording "BAZAAR" apart from the mark as shown because it merely describes features of the services. Trademark Act Section 6, 15 U.S.C. §1056; TMEP §§1213 and 1213.03(a).

In the context of the services the term "bazaar" conveys to consumers that the services feature a marketplace for goods and services. See, e.g., the attached dictionary entry. Presumably applicant's business management and auction facilitating services feature management of a marketplace for goods and services, or an auction marketplace. Accordingly, the term "bazaar" is merely descriptive in the context of the services and must be disclaimed.

The computerized printing format for the Office's *Trademark Official Gazette* requires a standardized format for a disclaimer. TMEP §1213.08(a)(i). The following is the standard format used by the Office:

No claim is made to the exclusive right to use "BAZAAR" apart from the mark as shown.

See *In re Owatonna Tool Co.*, 231 USPQ 493 (Comm'r Pats. 1983).

Response Guidelines

Although the trademark examining attorney has refused registration, applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

/Mark Rademacher/

Examining Attorney

Law Office 114

Ph: (571) 272-9723

Fx: (571) 273-9114

HOW TO RESPOND TO THIS OFFICE ACTION:

- **ONLINE RESPONSE:** You may respond formally using the Office's Trademark Electronic Application System (TEAS) Response to Office Action form (visit <http://www.uspto.gov/teas/index.html> and follow the instructions, but if the Office Action has been issued via email, you must wait 72 hours after receipt of the Office Action to respond via TEAS).
- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above and include the serial number, law office number and examining attorney's name in your response.

STATUS OF APPLICATION: To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov>.

VIEW APPLICATION DOCUMENTS ONLINE: Documents in the electronic file for pending applications can be viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

GENERAL TRADEMARK INFORMATION: For general information about trademarks, please visit the Office's website at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.

¹¹ The "e" prefix has become commonly recognized as a designation for goods or services that are electronic in nature or are sold or provided electronically. When the "e" prefix is coupled with a descriptive term or terms for electronic goods and/or services, then the entire mark is considered merely descriptive under Section 2(e)(1). *In re SPX Corp.*, 63 USPQ2d 1592 (TTAB 2002) (E-AUTODIAGNOSTICS merely descriptive of an "electronic engine analysis system comprised of a hand-held computer and related computer software"); *In re Styleclick.com Inc.*, 7 USPQ2d 1445 (TTAB 2000) (E FASHION held merely descriptive of software for use in shopping via global computer network and electronic retailing services); *Continental Airlines Inc. v. United Air Lines Inc.*, 53 USPQ2d 1385 (TTAB 1999) (E-TICKET held generic for computerized reservation and ticketing of transportation services).

Print: Aug 23, 2005

75587191

DESIGN MARK

Serial Number

75587191

Status

REGISTERED

Word Mark

EBAY

Standard Character Mark

No

Registration Number

2420512

Date Registered

2001/01/16

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

eBay, Inc. CORPORATION DELAWARE 2125 Hamilton Avenue San Jose
CALIFORNIA 95125

Goods/Services

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: On-line trading services to facilitate the sale of goods by others via a computer network and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith. First Use: 1998/01/15. First Use In Commerce: 1998/01/15.

Prior Registration(s)

2218732

Filing Date

1998/11/12

Examining Attorney

MERCALDI, ANTHONY

Print: Aug 23, 2005

75587191

Attorney of Record
Larissa A J Kehoe

elav

Print: Aug 23, 2005

75669553

DESIGN MARK

Serial Number

75669553

Status

REGISTERED

Word Mark

EBAY

Standard Character Mark

No

Registration Number

2410023

Date Registered

2000/12/05

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Owner

eBay Inc. CORPORATION DELAWARE 2125 Hamilton Avenue San Jose
CALIFORNIA 95125

Goods/Services

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: On-line trading services to facilitate the sale of goods by others via a computer network and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods, buyers' and sellers' performance, delivery, and overall trading experience in connection therewith. First Use: 1998/01/15. First Use In Commerce: 1998/01/15.

Prior Registration(s)

2218732

Lining/Stippling Statement

The mark is lined for red, blue, yellow, green, purple, orange and brown.

Filing Date

1999/03/29

Print: Aug 23, 2005

75669553

Examining Attorney

MERCALDI, ANTHONY

Attorney of Record

LARISSA A.J. KEHOE

copy

Print: Aug 23, 2005

76184915

DESIGN MARK

Serial Number

76184915

Status

REGISTERED

Word Mark

EBAY PREMIER

Standard Character Mark

No

Registration Number

2555505

Date Registered

2002/04/02

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

eBay Inc. CORPORATION DELAWARE 2145 Hamilton Avenue San Jose
CALIFORNIA 95125

Goods/Services

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: on-line trading services in which seller posts items to be sold at a set price, or alternatively to be offered in an auction-style format where bidding is done electronically, and providing evaluative feedback and ratings of sellers' goods and services, the value and prices of sellers' goods, buyers' and sellers' performance, delivery and overall trading experience in connection therewith. First Use: 2001/01/04. First Use In Commerce: 2001/01/04.

Prior Registration(s)

2218732;2410023;2420512

Description of Mark

The mark features the following color "e" in red, overlapping "e" and "b" section in purple, "b" in blue, overlapping "b" and "a" section in orange, "a" in yellow, overlapping "a" and "y" section in brown, "y" in green, and two color dashes above the "i" in yellow and light blue.

Print: Aug 23, 2005

76184915

Filing Date

2000/12/21

Examining Attorney

KHAN, ASMAT

Attorney of Record

Larissa Kehoe Hoffman

eBay Premier

<http://www.xreferplus.com/entry.jsp?xrefid=1122452&secid=-&hh=1> 08/24/2005 11:20:17 AM

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bazaar

noun

1. a market, *especially* in the Orient, consisting of rows of shops or stalls selling miscellaneous goods.
2. a fair for the sale of miscellaneous articles, *especially* for charitable purposes.

[Persian *bāzār*]

The Penguin English Dictionary, © Merriam-Webster Inc. and Longman Group Ltd, 1986, and Penguin Books, 2000

adjacent entries

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[bazaar](#)
[bazooka](#)
[BB](#)
[BBC](#)

APA | [MLA](#) | [Chicago](#) : [Citing this entry](#)

bazaar. *The Penguin English Dictionary* (2000). Retrieved 24 August 2005, from xreferplus.
<http://www.xreferplus.com/entry/1122452>

EXHIBIT C

TELEBAY

Packets \$24⁰⁰
TELEBAY

* Grandma Friendly Price.
* Grandma Friendly Installation.
* Grandma Talks Unlimited!



Fast Links

Local Phone
Business Service
Broadband Phone
Long Distance
Post-Pay Cellular
Pre-Pay Cellular
DSL / Cable / T1
Dial-Up Internet
Satellite TV
Shopping Mall
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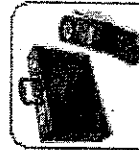
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Telebay, LLC has established relationships with top telecommunications providers to afford you the most competitive services and solutions available. We also furnish our worldwide sales representatives some of the industry's most comprehensive and aggressive commission plans. Enriching the lives of our customers and representatives is our goal: ***Building strong community with better communications.***



Local Phone



Business



VOIP



Long Distance



Cellular



Broadband



Dial-Up ISP



Satellite TV



Shopping



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**Flat-Rate bundled
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distance
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for your Biz!**

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.05	Spain
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Product Spotlight:

◆ Packet8 is better than Vonage in every category. If you want VoIP, you can't

do better than Packet8! See why the tech reviewers are raving:

"AOL's service was great during the day, but it suffered from clipped sentences and garbling during long-distance weeknight calls, particularly when we simultaneously downloaded video. Verizon calls came with soft echoes from time to time, and Lingo and Vonage conversations had some clips and garbles during evening hours. Comcast and **Packet8 delivered great audio quality**; but Comcast's service is relatively expensive.... **Packet8 calls were clearer than Verizon VoiceWing calls.... Businesses stand to benefit from VoIP, too. For instance, Packet8's Virtual Office, a \$40-per-month Internet-based phone system, allows an unlimited number of staff extensions, even if the staffers are in a different city or continent.**"

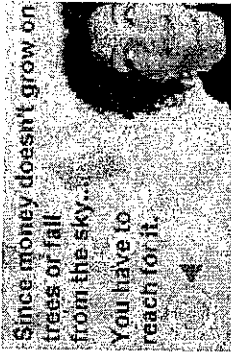
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Sep. 2005 Issue

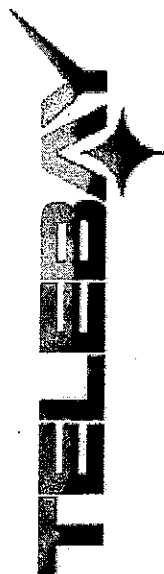
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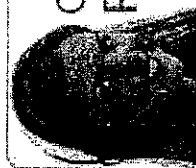
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FREE



BlackBerry® Pearl™ 8130
Sprint
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 Final Price:
FREE



Nextel i850
NEXTEL
 Retail Price: \$49.99
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FREE



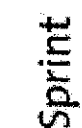
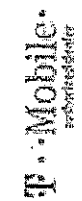
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T-Mobile
 Retail Price: \$299.99
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You make \$50.00



Motorola RAZR V3m Silver
verizon wireless
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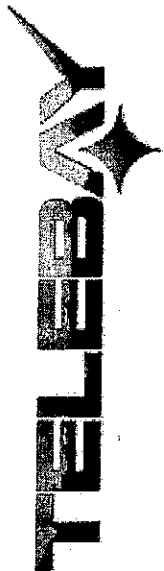
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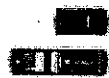
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☒ Only show me plans where my phone price will be FREE

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Service Plan Name

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Anytime Minutes

Night/Wknd Minutes

Monthly Fee

[Sort](#)
[Sort](#)
[Sort](#)

T-Mobile Individual Max

- 1500 Whenever Minutes
- Unlimited Night and Weekend Minutes
- Free Long Distance and Free Roaming on the T-Mobile network
- This plan includes: Voicemail, Caller Id, Call Waiting, Call Forwarding and Conference Calling.

[Compare](#)

\$59.99**

Unlimited

1500

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T-Mobile myFaves 1000

- 1000 Whenever Minutes
- Unlimited myFaves Minutes
- Unlimited Nights and Weekend Minutes
- Free Long Distance and Roaming on the T-Mobile network
- This plan includes: Caller Id, Voice Mail, Call Waiting, Call Forwarding, Conference Calling

[Compare](#)

\$59.99**

Unlimited

1000

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T-Mobile myFaves 1500

- 1500 Anytime Minutes
- Unlimited Night and Weekend Minutes
- Free Long Distance and Free Roaming on the T-Mobile network
- This plan includes: Caller Id, Voice Mail, Call Waiting, Call Forwarding, Conference Calling

[Compare](#)

\$69.99**

Unlimited

1500

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Forwarding, Conference Calling.

my Faves demo**T-Mobile**
authorized dealerCompare ☐**T-Mobile**
authorized dealer**T-Mobile Individual Ultra**

- 2500 Whenever Minutes
- Unlimited Night and Weekend Minutes
- Free Long Distance and Free Roaming on the T-Mobile network!
- This plan includes: Voicemail, Caller Id, Call Waiting, Call Forwarding and Conference Calling.

2500

Unlimited

\$99.99**

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T-Mobile Promo Individual Unlimited Plan

- Unlimited Anytime Minutes
- Unlimited Night and Weekend Minutes
- Unlimited Mobile-to-Mobile Minutes
- Unlimited Text, IM, Picture and Video Messaging
- Free Long Distance and Free Roaming on the T-Mobile network
- This plan includes: Caller Id, Voice Mail, Call Waiting, Call Forwarding.

Unlimited

Unlimited

\$99.99**

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my Faves demo**T-Mobile myFaves 2500**

- 2500 Whenever Minutes
- Unlimited myFaves Minutes
- Unlimited Nights and Weekend Minutes
- Free Long Distance and Roaming on the T-Mobile network!
- This plan includes: Caller Id, Voice Mail, Call Waiting, Call Forwarding, Conference Calling

2500

Unlimited

\$109.99**

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my Faves demo**T-Mobile Individual Supra**

- 5000 Whenever Minutes
- Unlimited Night and Weekend Minutes
- Free Long Distance and Free Roaming on the T-Mobile network!
- This plan includes: Voicemail, Caller Id, Call Waiting, Call Forwarding and Conference Calling.

5000

Unlimited

\$129.99**

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T-Mobile myFaves 5000

- 5000 Whenever Minutes
- Unlimited myFaves Minutes
- Unlimited Nights and Weekend Minutes
- Free Long Distance and Roaming on the T-Mobile network!
- This plan includes: Caller Id, Voice Mail, Call Waiting, Call Forwarding, Conference Calling

5000

Unlimited

\$139.99**

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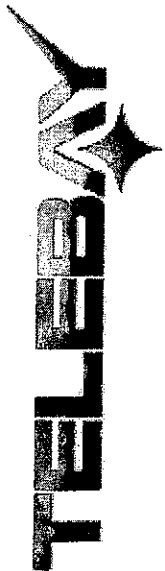
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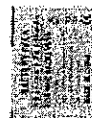
Phones:		Plans:	Included Accessories:
Line 1:	Motorola RAZR2 V8 (T-Mobile)	T-Mobile Individual Max	Lithium Ion battery, Compact wall charger
Line 2:	Motorola RAZR2 V8 (T-Mobile)	T-Mobile Individual Max	Lithium Ion battery, Compact wall charger

Use coupon e4598f4e for 20% off most accessories with phone & plan!

Add Accessories

Add T-Mobile Features

Batteries



Standard Li-Ion Battery
Always be prepared with an extra battery on hand!
more...
Sale Price: \$19.99 Retail Price: \$29.99

Text, Instant, Picture & Video Messaging

Send and receive short e-mails, text and instant messages (up to 140 characters), and even picture and video messages using your T-Mobile phone! Full Details

- ☐ Unlimited Messages **\$14.99/mo**
- ☐ Any 1000 Messages **\$9.99/mo**
- ☐ Any 400 Messages **\$4.99/mo**
- ☐ None

Bluetooth Headsets



Anycom Aris-21 Bluetooth Headset
Eliminate cables with Bluetooth technology! more...
Sale Price: \$29.99 Retail Price: \$59.99

See More

Car & Home Chargers



Car Charger
Spend a lot of time on the road? Charge your phone while in your car! more...
Sale Price: \$12.99 Retail Price: \$29.99

Stay connected with unlimited calls to other T-Mobile customers anywhere on the Get More@ network. Full Details


- ☐ Unlimited Mobile to Mobile **\$6.99/mo**
- ☐ None

Car Kits


T-MobileWeb

Search the mobile Web, find directions to the places you want to go, get


local, international, and financial news, stock quotes, weather, sports, play online games, e-mail, community chat, and... Full Details ▶
☐ T-MobileWeb \$5.99/mo
☐ None


 Anycom HCC-250 Portable Bluetooth Car Kit
 Eliminate cables with Bluetooth technology! more...
 Sale Price: \$59.99 Retail Price: \$99.99


Carrying Cases & Clips


 Black Stealth Fliptop Leather Case
 Carry your phone on the go AND keep it protected! more...
 Sale Price: \$14.99 Retail Price: \$29.99


Corded Headsets


 Motorola S280 Micro-USB Stereo Earbud Headset
 - SYN0896 more...
 Sale Price: \$19.99 Retail Price: \$39.99


Entertainment and Downloads


 Britannica Online Annual Subscription
 Britannica Online is the ultimate learning and research source for students and knowledge ... more...
 Sale Price: \$69.95 Retail Price: \$99.95


Fashion


 Body Glove Universal Fellowes WriteRight Screen Protectors 12 Pack - 9000201 more...
 Sale Price: \$9.99 Retail Price: \$49.99


Headphones & Speakers


 BlueAnt Sonic Portable Stereo Bluetooth Speakers - US-093719
 Eliminate cables with Bluetooth technology! more...
 Sale Price: \$124.99 Retail Price: \$499.99

Phone Holders & Mounts


 Universal PDA Auto Mount and Grip Holder with Window and Adhesive Mount - FXGRIPDAMNT
 Keep your phone secure while in your car! more...
 Sale Price: \$19.99 Retail Price: \$29.99

Security Tag


 You Get It Back Security Tag more...
 Sale Price: \$9.99 Retail Price: \$49.99



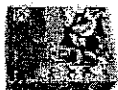
Software & Applications

☐ **Avanquest Ringtone Media Studio 2**

Create Ringtones, Movies & Wallpapers from Your Music, Videos & Pictures! more...

Sale Price: \$19.99 Retail Price: \$59.99

[See More ▶](#)



Wireless Internet Kits & USB Cables

☐ **Motorola Micro USB Data Cable - SKN6238A**

Easily synchronize, transfer data and port contacts! more...

Sale Price: \$19.99 Retail Price: \$39.99

[See More ▶](#)



[See all accessories ▶](#)

Add Other Options

Protect Your Investment!

- ☐ **Device Protection Plan \$49.99/year**
Protect Your Investment! more...

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TELEBAY

Packets \$24⁰⁰
TELEBAY

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- * Grandma Friendly Installation.
- * Grandma Talks Unlimited!



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Post-Pay Cellular
Pre-Pay Cellular
DSL / Cable / T1
Dial-Up Internet
Satellite TV
Shopping Mall
Opportunity

Long Distance Service for Home & Office

We've sifted through all of the long distance carriers out there to provide you with the best selection. We know that finding the right long distance provider can be a headache, so we've made it easy by narrowing it down to a few of the best: Pioneer, Opex and Trinsic. Look below to see which is best for you!



Pioneer Telephone

Traditional long distance with old fashioned customer service. No hidden surprises... just a simple, straightforward and honest company. Pioneer has not raised its domestic U.S. rates since 1989. Pioneer leases network from more than 300 vendors worldwide and has it's own switching network consisting of three Nortel DMS 250 switches. Pioneer has completed billions of minutes of traffic to every destination in the world.

- Rate Buster - 2.7 cents per minute for state-to-state calls billed in easy 60 second increments with no monthly fee.
- Talk Cents - 3.25 cents per minute for state-to-state calls billed in 6 second increments with no monthly fee.

Opex Value Plus 2.95

OPEX is an FCC Certified and Tariffed long distance carrier. Their network rests upon several large nationwide network providers who have high quality global connectivity. Since Opex buys their network minutes in such bulk and has the most efficient support operation in the industry, they can offer deep discounted rates without compromising the quality of service. OPEX does not spend money on expensive advertising. This also allows them to pass even more savings on to their customers.



- 2.95 Plan- Outstanding customer service really makes Opex stand above many of their competitors, but 2.95 cent state-to-state calling doesn't hurt either! Easy 60 second billing. A \$2 fee applies for bills less than \$20 in a month.

Flat-Rate bundled local & long distance for your home!

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Broadband Phone Service

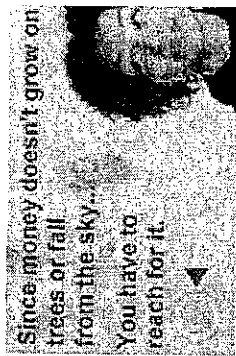
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.04	Sweden
.05	Spain
.06	Japan, Russia
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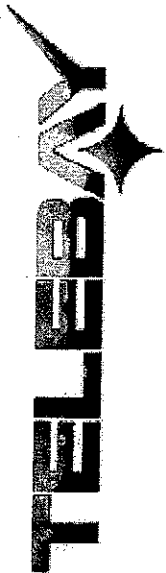
- ◆ If you don't currently have broadband service, either through your cable company or local telephone provider, try our broadband search tool. By entering your phone number we can search over 40 different broadband providers in your area to give you the best possible deal. [Try our broadband search engine today!](#)

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Most orders placed by 2PM PST ship within 24 hours!

Shopping Security

Price Now After Rebates

Phone(s)

Monthly Fee

Plan

<input type="checkbox"/> Update <input type="checkbox"/> Change <input type="checkbox"/> Remove	T-Mobile* T-Mobile Individual Max This plan includes: Caller Id, Voice Mail, Call Waiting, Call Forwarding, Conference Calling. Activation Fee: \$35.00 Plan Options 2 Year Contract (required) Add/Edit Plan Options		Motorola RAZR2 V8 (T-Mobile) Retail Price: \$399.99 Special Promotions details <ul style="list-style-type: none"> • Exclusive \$50 instant discount w/ MyFaves! • Exclusive \$50 mail-in rebate! • Exclusive \$100 instant discount! • \$50 T-Mobile Mail-In Rebate Includes <ul style="list-style-type: none"> • lithium ion battery • compact wall charger Add/Edit Accessories	\$249.99 \$249.99 -\$50.00 -\$50.00 -\$100.00 -\$100.00 -\$50.00
<input type="checkbox"/> Update <input type="checkbox"/> Change <input type="checkbox"/> Remove	T-Mobile* T-Mobile Individual Max This plan includes: Caller Id, Voice Mail, Call Waiting, Call Forwarding, Conference Calling. Activation Fee: \$35.00 Plan Options 2 Year Contract (required)		Motorola RAZR2 V8 (T-Mobile) Retail Price: \$399.99 Special Promotions details <ul style="list-style-type: none"> • Exclusive \$50 instant discount w/ MyFaves! • Exclusive \$50 mail-in rebate! • Exclusive \$100 instant discount! • \$50 T-Mobile Mail-In Rebate 	\$249.99 \$249.99 -\$50.00 -\$50.00 -\$100.00 -\$100.00 -\$50.00




[Add/Edit Plan Options](#)

Includes

- lithium ion battery
 - compact wall charger
- [Add/Edit Accessories](#)

Monthly Fee: ** \$119.98

Subtotal: \$199.98 -\$0.02

Accessories

 1

 Update
Remove

 In Stock
 Anycom Aris-21 Bluetooth Headset
 Retail Price: \$59.99 Unit Price: 29.99

In Stock

Add Accessories to Your Order

Accessory Subtotal: \$29.99 \$29.99

Shipping Options

 FedEx 2 Day - Free (\$0.00) ☒ FedEx

Coupon Code

 Update

Gift / Reward Code

 Update

\$0.00 \$0.00

Today's Total: * \$229.97

TOTAL AFTER REBATES: \$29.97

Pricing Notes

* Price above does not reflect sales tax, which will be added for Texas and California.

Tax estimate: \$87.54. Today's total + tax estimate: \$317.51.


 The retail value of this purchase is **\$859.97** -- Your discounted price is **\$229.97**.

 You are eligible for mail-in rebates totaling **\$200.00** -- After rebates **you pay only \$29.97**.

**T-Mobile will bill you \$70.00 for activation on your first bill, and \$119.98 per month (plus taxes & fees) each subsequent month.

 You can keep your number if you are switching carriers.
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Save up to **50%**

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New! "Alive" Chimpanzee

SHARPER IMAGE

1000 Catalogs

ShopAtHome.com

Buy.com average grade: A+ (2 customer reviews)
Offering over 2 million products to over 6 million customers, Buy.com® is the Internet retailer of choice. With categories ranging from computer hardware to software, from electronics to cellular, from books to movies, from music to toys, and tons more, we've got whatever it is you're craving 24/7, all year long.

★ To write a review and rate this store click here.



overstock.com

average grade: A (5 customer reviews)
An Internet leader for name-brands at clearance prices. We help you shop smarter by offering top-quality name-brand merchandise at 40-80% off, every day of the week.

★ To write a review and rate this store click here.

BOOKS OF THE MONTH

Save 40% On Best-Selling Books Every Month

FAMILY Christian Stores

Wal-Mart average grade: A+ (11 customer reviews)
We want our customers to trust in our pricing philosophy and to

WAL-MART[®] always be able to find the lowest prices with the best possible service.
We're nothing without our customers.

★ To write a review and rate this store click here.

Home Shopping Network average grade: **A+** (5 customer reviews)
HSN is your shopping destination for the best selection of jewelry, electronics, gifts and more from brand names you know and trust. Shop 24 hours a day, 7 days a week on Home Shopping Network TV and HSN.com.

★ To write a review and rate this store click here.

Macy's average grade: **A+** (5 customer reviews)
Shop online at the world's largest department store; an extraordinary assortment from all the best brands in fashion for him and her, everything for home, cosmetics & fragrances and jewelry.

★ To write a review and rate this store click here.

Fingerhut average grade: **B-** (7 customer reviews)
From grills to computers, fingerhut has it all! Find what you need at great prices.

★ To write a review and rate this store click here.

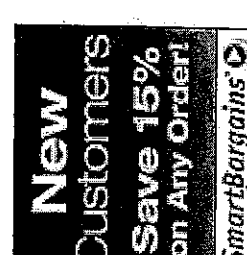
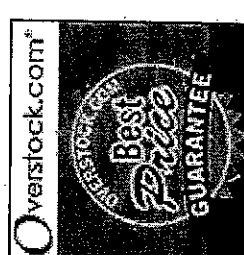
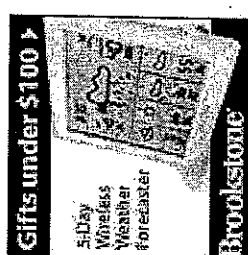
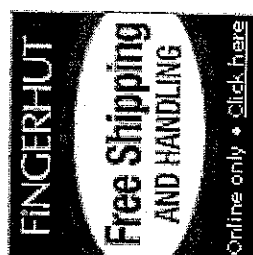
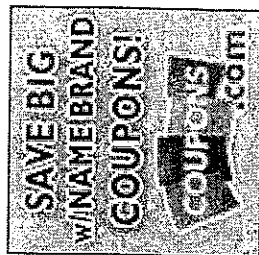
Brookstone average grade: **A+** (2 customer reviews)
The Perfect Innovative Gift Idea; Brookstone offers an assortment of Specialty Consumer Products. Discover smart solutions for easier, more comfortable living. Innovative gifts that make life better.

★ To write a review and rate this store click here.

Half.com average grade: **A+** (2 customer reviews)
Half.com by eBay is a fixed-price, online marketplace where you can buy and sell new and used products at discounted prices."

★ To write a review and rate this store click here.

The Sharper Image average grade: **A** (3 customer reviews)
The Sharper Image is a specialty retailer that is nationally and



internationally renowned as a leading source of new, innovative, high-quality products that make life better and more enjoyable.

**THE
SHARPER
IMAGE**

★ To write a review and rate this store click here.

SmartBargains average grade: **A+** (1 customer review)

SmartBargains makes it easy for brand-oriented, value-conscious consumers to find wonderful bargains on the products they love. Every day we offer superior quality goods and top brands at up to 70% off retail value.

★ To write a review and rate this store click here.

SmartBargains
Top Brands. Smart Prices.

Coupons.com average grade: **A+** (1 customer review)

With over \$100 worth of Free Printable Coupons from familiar consumer brands, Coupons.com is the undisputed leader in providing print-at-home coupons! Carries coupons from over 300 well known companies such as General Mills, L'Oreal, Johnson & Johnson & 3M products offering over 65 local in-store coupons.

★ To write a review and rate this store click here.

COUPONS
com

Family Christian Stores average grade: **B+** (2 customer reviews)

America's leading specialty retailer dedicated solely to the Christian retailing market, offering an extensive selection of high-quality, Christian-related products.

★ To write a review and rate this store click here.

Family
CHRISTIAN STORES

Shop At Home

Founded in 1986, Belcaro Group, Inc. started business by producing catalogs featuring other catalogs. This unique service enabled consumers and catalog retailers to connect with each other with minimal cost and effort.

★ To write a review and rate this store click here.

ShopAtHome

336 Stores

If you were given a shopping mall... would you take it?

Well, here you go! You can now have your mall for free. We're giving it to you. All you have to do is promote it. For sales generated from your mall, you will make commissions. You can even give away malls to others and make money from their sales, too (up to 4 levels deep). Get your own piece of Internet Real Estate today!



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